

SSB 5728 - S AMD 161

By Senators Rasmussen, Hargrove

ADOPTED 03/14/2003

1 Beginning on page 7, line 32, strike all of section 404 and insert
2 the following:

3 "Sec. 404. RCW 7.70.100 and 1993 c 492 s 419 are each amended to
4 read as follows:

5 (1) No action based upon a health care provider's professional
6 negligence may be commenced unless the defendant has been given at
7 least ninety days' notice of the intention to commence the action. If
8 the notice is served within ninety days of the expiration of the
9 applicable statute of limitations, the time for the commencement of the
10 action must be extended ninety days from the service of the notice.

11 (2) The provisions of subsection (1) of this section are not
12 applicable with respect to any defendant whose name is unknown to the
13 plaintiff at the time of filing the complaint and who is identified
14 therein by a fictitious name.

15 (3) After the filing of the ninety-day presuit notice, and before
16 a superior court trial, all causes of action, whether based in tort,
17 contract, or otherwise, for damages arising from injury occurring as a
18 result of health care provided after July 1, 1993, shall be subject to
19 mandatory mediation prior to trial.

20 (2) The supreme court shall by rule adopt procedures to implement
21 mandatory mediation of actions under this chapter. The rules shall
22 require mandatory mediation without exception and address, at a
23 minimum:

24 (a) Procedures for the appointment of, and qualifications of,
25 mediators. A mediator shall have experience or expertise related to
26 actions arising from injury occurring as a result of health care, and
27 be a member of the state bar association who has been admitted to the
28 bar for a minimum of five years or who is a retired judge. The parties
29 may stipulate to a nonlawyer mediator. The court may prescribe
30 additional qualifications of mediators;

1 (b) Appropriate limits on the amount or manner of compensation of
2 mediators;

3 (c) The number of days following the filing of a claim under this
4 chapter within which a mediator must be selected;

5 (d) The method by which a mediator is selected. The rule shall
6 provide for designation of a mediator by the superior court if the
7 parties are unable to agree upon a mediator;

8 (e) The number of days following the selection of a mediator within
9 which a mediation conference must be held;

10 (f) A means by which mediation of an action under this chapter may
11 be waived by a mediator who has determined that the claim is not
12 appropriate for mediation; and

13 (g) Any other matters deemed necessary by the court.

14 (3) Mediators shall not impose discovery schedules upon the
15 parties.

16 (4) The supreme court shall by rule also adopt procedures for the
17 parties to certify to the court the manner of mediation used by the
18 parties to comply with this section."

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19 On page 1, line 2 of the title, after "4.56.250," insert
20 "7.70.100,"

21 On page 1, line 5 of the title, strike "adding a new section to
22 chapter 4.28 RCW;"

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